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CORRESPONDENCE



Dr. Cate O'Keefe
Executive Director,
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

September 10, 2026

Daniel Salerno
Chair,
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Re: Executive Order 14276 & 2027 Council Priorities Agenda Items

Dear Dan,

Conservation Law Foundation (CLF) submits these comments for consideration by the New England Fishery Management Council (Council) during your Executive Order 14276 and 2027 Council Priorities Discussion at the upcoming meeting in Plymouth, Massachusetts. Specifically, CLF urges the Council to decline to prioritize (1) reopening portions of the Northern Edge Habitat Area of Particular Concern (HAPC) to scallop fishing, and (2) expanding access within the Great South Channel Habitat Management Area (HMA) to surfclam dredging as requested in NOAA Fisheries' July 2, 2026 correspondence.¹ We also offer separate comments for the Council's customary priority-setting discussion, urging the Council to prioritize river herring and shad management measures and prioritize Phase II of the Atlantic cod transition plan, including revised spawning protections for Atlantic cod.

I. Northern Edge Habitat Area of Particular Concern

A. NOAA's Recommendations Are Not Supported by New Information.

The Council should approach NOAA's recommendations with caution. The agency now asks the Council to revisit habitat protections that were developed through extensive public processes, consistent with the best available science, and adopted to satisfy the Council's duty under the Magnuson-Stevens Act (MSA) to minimize adverse fishing impacts on essential fish habitat (EFH) to the extent practicable.

¹ Eugenio Piñeiro Soler, Assistant Adm'r for Fisheries, Nat'l Marine Fisheries Serv., Letter to Cate O'Keefe, Ph.D., Exec. Dir., New England Fishery Mgmt. Council (July 2, 2026) (regarding Executive Order 14276, *Restoring American Seafood Competitiveness*).

NOAA’s July 2 letter provides no new scientific information, habitat analyses, or species-specific conservation findings that justify reopening settled habitat decisions. Instead, it relies primarily on unsupported economic arguments concerning access and production while giving insufficient weight to the biological and habitat concerns underlying the existing protections.

B. The Conservation and Management Concerns Underlying the 2024 Decision Remain.

NOAA requests that the Council “advance a Fishery Management Plan Amendment to consider establishing a controlled, rotational limited-access scallop fishery within the Northern Edge Habitat Area of Particular Concern.”² CLF strongly urges the Council not to revisit the Northern Edge action absent new scientific information demonstrating that the concerns that led the Council to discontinue the framework in June 2024 have been resolved.

When the Council voted to discontinue development of the Northern Edge action, it cited extensive evidence demonstrating the importance of the Habitat Management Area to Atlantic cod, American lobster, Atlantic herring, and the long-term productivity of the Georges Bank scallop resource. The Council further concluded that identifying an appropriate access season was exceptionally difficult because periods that maximize scallop yield overlap with important biological periods for cod and lobster, and that opening the area could undermine long-term attainment of optimum yield of scallops if the Northern Edge serves as an important larval source for other productive scallop grounds. The Council also recognized that fundamental conflicts remained between maximizing scallop harvest and protecting other fishery resources despite more than a year of intensive development work.³

NOAA’s July 2026 request does not address any of these concerns. It offers no new information regarding juvenile cod habitat, no new evidence regarding impacts to Atlantic herring or lobster, no new analysis regarding scallop larval connectivity, and no new management approach for resolving the conflicts identified by the Council in 2024.

C. Previously Raised Concerns About Mitigating the Impacts of Opening the Northern Edge with New Measures Consistent with OHA2 Remain Unresolved.

The concerns raised in a June 19, 2024, joint letter submitted by CLF and Oceana remain unchanged.⁴ As explained in that letter, the Northern Edge HAPC was designated because of its

² *Id.* at 1.

³ New England Fishery Mgmt. Council, *Northern Edge: Action Discontinued* (June 27, 2024), <https://www.nefmc.org/library/northern-edge>.

⁴ Letter from Elizabeth Etrie & Erica Fuller, Conservation Law Foundation, and Gib Brogan, Oceana, to Eric Reid, Chair, New England Fishery Mgmt. Council, and Cate O’Keefe, Exec.

unique ecological function, sensitivity to degradation, and importance to juvenile Atlantic cod and numerous other managed species. The letter further explained that repeated rotational fishing access would not constitute a temporary habitat disturbance but rather an ongoing management program resulting in recurring habitat impacts and degradation of ecological functions over time. The letter also identified concerns related to Atlantic herring spawning habitat, scallop spawning and recruitment dynamics, and consistency with the goals and objectives of Omnibus Habitat Amendment 2 (OHA2). None of those concerns have been resolved, and NOAA’s July 2 letter does not even attempt to address them.

If the Council nevertheless chooses to revisit the Northern Edge action, it should first identify mitigation measures capable of addressing the adverse habitat impacts that reopening would cause and demonstrate how those measures are consistent with the goals and objectives of OHA2.

As CLF and Oceana previously noted, NOAA’s EFH regulations contemplate the identification and implementation of mitigation measures where fishing impacts are more than minimal and temporary.⁵ Further, the Magnuson-Stevens Act requires the identification of EFH for all federally managed species and the development of measures that prevent, mitigate, or minimize any adverse effects from fishing on essential fish habitat. Agency regulations further advise that all Fishery Management Plans (FMP) “must identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for the adverse effects identified pursuant to paragraphs (a)(3) through (5) of this section, ***especially in habitat areas of particular concern.***”⁶ Any renewed Northern Edge action should therefore begin with a discussion of how adverse impacts will be avoided, minimized, or offset while remaining consistent with OHA2’s habitat conservation objectives.⁷

II. Great South Channel Habitat Management Area

A. NOAA’s Request Ignores the Biological Basis for Existing Protections.

NOAA also requests that the Council consider reopening portions of the Great South Channel Habitat Management Area to surfclam dredging through “adaptive, data-driven exemptions” based on “updated cod spawning data.”⁸ At the outset, it is notable that NOAA’s request is

Dir., New England Fishery Mgmt. Council (June 19, 2024), [7.-Habitat-Council-Correspondence.pdf](#).

⁵ 50 C.F.R. § 600.815(a)(2)(ii) (2026).

⁶ 50 C.F.R. § 600.815(a)(6) (emphasis added).

⁷ New England Fishery Mgmt. Council, *Omnibus Essential Fish Habitat Amendment 2*, Vol. 1, at 83 (2016).

⁸ Piñeiro Soler, *supra* note 1, at 2.

premised on updated cod spawning information, yet NOAA has not actually provided any new spawning data supporting its recommendation.

The Council's own August 2026 draft evaluation of the Great South Channel HMA exemption program concludes that significant uncertainty remains regarding cod spawning activity within the HMA. The draft report also concludes that Atlantic cod remains a species of conservation interest in the Great South Channel HMA. The report notes that structured habitats in the HMA are important for newly settled juvenile cod, that species distribution models indicate high densities of both juvenile and adult cod within the HMA, and that Nantucket Shoals has historically been recognized as a cod spawning ground.⁹

The report also notes that while acoustic receivers near the HMA have collected data capable of detecting cod spawning vocalizations, those data have not yet been analyzed to identify cod spawning activity.¹⁰ In other words, the very information NOAA invokes to justify reopening the area has not yet been evaluated or peer reviewed for use in management actions.

Importantly, the report does not conclude that cod spawning is absent from the area. Rather, it concludes that current use of the HMA for spawning remains uncertain because the necessary acoustic analyses have not yet been completed. NOAA's request therefore appears to rely on the premise of "updated cod spawning data" while failing to provide any such data and disregarding the Council's own finding that substantial uncertainty remains.

B. NOAA's Request Is Particularly Troubling Given Atlantic Cod Rebuilding Obligations.

NOAA's recommendation is especially concerning when viewed in the context of NOAA and the Council's ongoing responsibility to address chronically overfished Atlantic cod stocks. The Council's own draft Great South Channel HMA evaluation continues to identify Atlantic cod as a species of conservation concern within the HMA, citing high predicted densities of juvenile and adult cod, structured habitats important to juvenile cod, and Nantucket Shoals' historic role as a cod spawning area.¹¹

For years, scientists, managers, and stakeholders have recognized that the four new Atlantic cod stocks are overfished and require rebuilding measures. The Secretary's recent notification to the

⁹ Great South Channel Habitat Management Area Surfclam Exemption Program Review, Draft Report, at 4–5, 14–21 (Habitat Plan Dev. Team Aug. 18, 2026).

¹⁰ *Id.* at 22–23.

¹¹ *Id.* at 4.

Council of the overfished status of the cod stocks¹² has triggered the requirement that the Council prepare and implement rebuilding measures in two years or less that are designed to rebuild the stock in a time period that is as short as possible.¹³ Against that backdrop, NOAA's request that the Council prioritize expanding surfclam dredging access within the Great South Channel HMA sends a troubling and contradictory signal.

While important questions remain regarding the current extent and location of spawning activity, NOAA has provided no new spawning data that would justify reducing protections or increasing fishing access in this habitat. To the contrary, the Council's recent evaluation underscores the remaining uncertainty and the need for additional analysis before reaching management conclusions.⁵

The Magnuson-Stevens Act's rebuilding provisions are intended to restore depleted stocks to levels capable of producing maximum sustainable yield, and rebuilding necessarily depends on maintaining and protecting habitats that support spawning, juvenile survival, and stock productivity.¹⁴ At a time when the Council should be preparing to evaluate what additional management measures may be necessary to rebuild cod, including potential spawning and habitat protections, NOAA is instead encouraging consideration of expanded dredge access in an area historically associated with cod spawning and identified by the Council's own recent evaluation as important habitat for juvenile and adult cod. The concern is particularly acute in the case of the Western Gulf of Maine stock complex where separating out the winter and spring spawning components for management is difficult and the Great South Channel and Nantucket Shoals region that are primarily associated with winter-spawning cod offer one of the few opportunities for targeted management efforts.¹⁵

Accordingly, NOAA's request is premature and risks undermining the very habitat protections that may prove important to the future cod rebuilding efforts NOAA has only just initiated.¹⁶

¹² Michael Pentony, Reg'l Adm'r, Greater Atl. Reg'l Fisheries Off., Nat'l Marine Fisheries Serv., Letter to Daniel Salerno, Chair, New England Fishery Mgmt. Council (Aug. 27, 2026) (regarding status determinations for all four Atlantic cod stocks.)

¹³ See 16 U.S.C. § 1854(e)(2).

¹⁴ 16 U.S.C. § 1854(e)(4)(A); 50 C.F.R. § 600.310(j).

¹⁵ New England Fishery Mgmt. Council, *Southern New England Habitat Area of Particular Concern Framework* 49-52 (2023); Great South Channel Habitat Management Area Surfclam Exemption Program Review, Draft Report, at 22-23 (Aug. 18, 2026).

¹⁶ 16 U.S.C. § 1854(e)(2)-(4); Great South Channel Habitat Management Area Surfclam Exemption Program Review, Draft Report, at 22-23 (Aug. 18, 2026).

III. The Council Should Prioritize River Herring and Shad Management Measures.

Separately, during its customary priority-setting discussion, the Council should continue the development of river herring and shad management measures. The Council has already invested substantial time in these measures, and with Atlantic herring specifications expected to be completed at the September meeting, it is especially important that river herring and shad work continue without delay.

CLF has previously emphasized, including in correspondence submitted with the Wampanoag Tribe of Gay Head (Aquinnah), that federal Atlantic herring management continues to affect river herring resources of cultural, nutritional, ecological, and economic importance. That correspondence specifically requested Herring PDT analysis of a targeted November–March time-area closure in areas 537, 539, and 611 to meaningfully reduce incidental catch of river herring in southern New England and protect the Herring Creek alewife run in the Menemsha Pond Complex. It also explained that high incidental river herring catch has contributed to the decline of a species that once supported the Aquinnah Wampanoag community and remains a Tribal Trust resource of continuing importance.¹⁷

The Council should therefore ensure that management of incidental catch of river herring and shad remains a priority in the coming year, with particular attention to measures that reduce incidental catch and protect vulnerable runs such as Herring Creek. Completing herring specifications should allow the Council to turn promptly to these unresolved conservation needs, not slow or displace them. CLF is concerned that adding additional, controversial items to the Council’s workload, including rescinding industry-funded monitoring requirements for the Atlantic herring fishery, removing slippage accountability measures, and eliminating bycatch caps, would divert limited Council time and attention away from this critical work. These issues raise significant conservation and accountability concerns, and they should not be allowed to delay the Council’s continued development of meaningful measures to protect river herring and shad, including the Herring Creek alewife run in the Menemsha Pond Complex.

IV. The Council should prioritize rebuilding plans, spawning protections and other management measures to recover Atlantic cod stocks.

The Council should prioritize the development and implementation of effective rebuilding plans and management measures for Atlantic cod. NOAA has officially notified the Council of the status determinations for all four Atlantic cod stocks, triggering the Council’s obligation to

¹⁷ Letter from Wampanoag Tribe of Gay Head (Aquinnah) & Conservation Law Found. to Daniel Salerno, Chair, New England Fishery Mgmt. Council, and Cate O’Keefe, Ph.D., Exec. Dir., New England Fishery Mgmt. Council, Re: Request for Herring PDT Analysis of Targeted Time Area Closures (Apr. 9, 2026), https://d23h0vhs26o6d.cloudfront.net/4a_260414_-_Additioanl-Herring-Council-Correspondence-Updated.pdf.

establish rebuilding plans for each stock in two years or less and to end overfishing for Western Gulf of Maine and Southern New England cod.¹⁸ Cod remains in poor condition throughout much of the region, and delays in adopting conservation and rebuilding measures increase the risk of further declines and foregone fishing opportunities in the future.

Rebuilding plans should be designed to achieve stock recovery as quickly as possible while accounting for current scientific information and changing environmental conditions. As part of these efforts, the Council should advance measures that identify and protect important cod spawning areas and seasons. Protecting spawning aggregations can help improve reproductive success, support stock productivity, and enhance the effectiveness of broader rebuilding efforts. Prioritizing cod rebuilding, ending overfishing, and strengthening spawning protections will help ensure the long-term sustainability of the resource and the fishing communities that depend on healthy cod populations.

V. The Council Should Clarify the Scope and Limits of Any Ecosystem Component Designation Priority for Groundfish.

Finally, we ask the Council to clarify, well in advance of the December 2026 priority-setting discussion, which species or stocks are envisioned under *Groundfish Proposed Priority G8* “Define Ecosystem Component status for several groundfish stocks” and the specific circumstances under which a stock would be considered for ecosystem component status. The MSA clearly states that fishery management plans must contain conservation and management measures that are “necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks,” and further requires the Secretary to implement measures to end overfishing immediately and rebuild stocks that have become overfished.¹⁹ Stocks that are overfished, subject to overfishing, or otherwise require conservation and management therefore cannot simply be removed from active management through ecosystem component designation. Before asking the Council to prioritize this work, staff should identify the species under consideration and clearly state that overfished stocks, stocks subject to overfishing, and stocks likely to become overfished are not candidates for ecosystem component designation and will remain subject to all applicable rebuilding and accountability requirements.

¹⁸ Pentony, *supra* note 10, at 1.

¹⁹ 16 U.S.C. §1853(a)(1)(A) (requiring FMPs to include measures “necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks”); 16 U.S.C. § 1854(e)(3) (requiring implementation of measures to end overfishing immediately and rebuild overfished stocks); 50 C.F.R. § 600.305(c)(1).

VI. Conclusion

NOAA's initiatives reflect a broader agenda of this Administration, that trades ocean health and long-term fisheries resilience for near-term increases in seafood production that are weakening the foundation for preventing overfishing, preserving habitat and ecosystems, and grounding management in the best available science. NOAA has not made the case for reopening settled habitat protections at the Northern Edge or in the Great South Channel HMA. The record does not support redirecting limited Council capacity toward access expansions that remain scientifically unresolved and legally risky. The Council should reject these requests unless and until NOAA provides new information that addresses the habitat, species, and rebuilding concerns identified in the record. In the meantime, the Council should keep its focus where it belongs: protecting habitat, rebuilding Atlantic cod, and advancing long-overdue river herring and shad measures.

Sincerely,

Sarah Shahabi,
Associate Attorney

Elizabeth "Libby" Etrie,
Director Ocean Policy

Gareth Lawson,
Senior Scientist

Erica Fuller,
Senior Counsel



Subject: 2027 Council priorities — river herring and shad action

September 10, 2026

Mr. Daniel Salerno, Chair
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

comments@nefmc.org

Dear Chairman Salerno and Council Members:

On behalf of the American Saltwater Guides Association, thank you for the opportunity to comment on 2027 priorities. We ask the Council to adopt river herring and shad protection measures as a standalone 2027 priority and to complete that action in the first half of the year.

The Council has acknowledged for several years that bycatch of river herring and shad in the Atlantic herring and mackerel fisheries requires additional management. Amendment 10 was developed to address spatial and temporal allocation and bycatch reduction, then discontinued. In June, the Council separated Atlantic herring specifications from river herring and shad measures and indicated that the protection action would still move forward in early 2027. That commitment should appear on the 2027 work plan as a discrete action with a defined timeline.

River herring and shad remain depleted relative to historic abundance. At-sea catch in midwater fisheries has continued to impede recovery, particularly in southern New England, even as states and tribes have invested heavily in dam removal and fish passage. While directed herring and mackerel effort has been limited in recent years, some runs have improved and returning fish have been larger than in the recent past. Those gains are incomplete and are not a substitute for management. Midwater effort is increasing again. Without time-area closures and catch caps that trigger in-season accountability, the Council will have allowed a temporary reduction in effort to stand in for a lasting rule.

ASGA therefore requests the following:

1. List river herring and shad measures as a 2027 priority, with completion in the first half of the year.
2. Advance the most protective alternatives under consideration, including time-area closures in areas and seasons of documented overlap and catch caps set low enough to constrain the fishery when reached.
3. Limit the action to river herring and shad measures. Proposals to rescind the industry-funded monitoring program, revise slippage provisions, or modify haddock catch caps should be considered separately. Combining those issues with this action would delay implementation and undermine the purpose of the package.
4. Implement the selected measures as soon as practicable.

ASGA's members depend on well-managed public fisheries and on the integrity of the Council process. Habitat restoration is not a complete strategy if mortality at sea is left unaddressed. We respectfully ask the Council to keep this action on schedule and to select measures commensurate with the condition of the resource.

Thank you for your consideration.

Sincerely,

Tony Friedrich
President and Policy Director
American Saltwater Guides Association
tony@saltwaterguidesassociation.org

September 10, 2026

Via Electronic Mail

Daniel J. Salerno, Chair
Members of the Council
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

RE: Great South Channel HMA Review and 2027 Priorities

Dear Chair Salerno and Council Members:

This letter is submitted on behalf of the Saving Surf Clams Coalition (“SSCC”), an unincorporated trade association comprised of business involved in the Atlantic surf clam fishery. At the New England Fishery Management Council’s September meeting, you will receive a report from the Habitat Plan Development Team evaluating the surfclam exemption program and outlining results of cooperative research occurring since the program was established. As explained, this report supports establishment of a 2027 Council priority to initiate a framework action to consider alternatives for expanding surfclam access within the Great South Channel (“GSC”) Habitat Management Area (“HMA”).

Of most significance, the report finds that the GSC HMA is not a hotspot for adult Atlantic cod, even though the area does contain a significant amount of juvenile and adult cod essential fish habitat (“EFH”). It goes on to note that even if there is cod spawning activity within the HMA – an unlikely eventuality given the warming trend in the area, as research has shown – the impacts of surfclam dredging in the “area are on average low.” This is in part because of the small footprint of the fishery. Even at its peak in 2015, swept area by surfclam dredges accounted for less than 1% of the HMA.

Also, research has shown that Rose and Crown and Davis Bank East areas are highly dynamic—heavily impacted by tidal and storm forces and characterized by mobile sand waves that routinely scour the bottom. As such, the dominant epifauna in these areas are common species of hydroids, bryozoans, and barnacles, which are “low succession” species characteristic of a dynamic environment. The exceedingly small area impacted by dredges in such an environment are temporary and not likely to adversely affect cod EFH in the legal sense.

Finally, the report shows the significant adverse impact of the clam dredge exemption program. Revenues have declined by 80% compared with the pre-closure period. Meanwhile, under the last cooperative research project, compensation fishing impacted, at most, 8.75 square

kilometers (“sq. km”) but yielded revenues of \$3.2 million. Significant economic value for the Nation can be obtained from increased access with only a minimal and temporary impact on EFH. It will also aid the fishery in achieving optimum yield from the surfclam resource, the key Magnuson-Stevens Act objective.

The SSCC thus urges the Council to add a priority to initiate a framework action to consider alternatives to increase access within the GSC HMA to the surfclam fishery. The primary alternative should be to restore access to the Rose & Crown and Davis Bank East areas. Those have been studied and the results support findings that the fishery does not have an adverse impact on New England Council-managed species, in the legal sense of that term. We also recommend designating the remainder of the area, save perhaps for the northeast corner, as research areas. That would incentivize additional studies to better understand the HMA’s habitat and its importance to managed species.

Thank you for your attention to this important matter. We will be available at the meeting to answer any questions.

Sincerely,

Shaun M. Gehan

Shaun M. Gehan,

Counsel for the Saving Surf Clams Coalition